

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

ESTATE OF ROGER D. :
OWENSBY JR., et al., :
 :
Plaintiffs, :
vs. : Case No. 01-CV-769
 : (Judge S. A. Spiegel)
CITY OF CINCINNATI, :
et al., :
 :
Defendants. :

Videotaped deposition of ROBERT BLAINE JORG, a
defendant herein, called by the plaintiffs for
cross-examination, pursuant to the Federal Rules of
Civil Procedure, taken before me, Wendy Davies
Welsh, a Registered Diplomate Reporter and Notary
Public in and for the State of Ohio, at the offices
of Helmer, Martins & Morgan Co. LPA, 1900 Fourth &
Walnut Centre, 105 East Fourth Street, Cincinnati,
Ohio, on Tuesday, October 14, 2003, at 10:12 a.m.

12:31:00 1 then, again, he comes back on as "4055." Officers
12:31:05 2 jumped beats. I ran Beat 6 every now and then.
12:31:09 3 4061, I believe, didn't exist.

12:31:12 4 Q. So where they say "4061," they meant
12:31:15 5 "4055"?

12:31:16 6 A. I believe so. I could be wrong, but I
12:31:21 7 believe that's --

12:31:32 8 Q. On the last page, 4-- about two-thirds of
12:31:36 9 the way down, 4042 (sic) says, "Signal 39, back to
12:31:39 10 uhm, Sam's Carry Out from. . . 58 Yorktown.
12:31:44 11 Starting miles 66454." What does "Signal 39" mean?

12:31:51 12 A. I don't remember.

12:32:25 13 Q. In this incident was there -- was it your
12:32:28 14 understanding that there was an assault on Officer
12:32:31 15 Hunter?

12:32:31 16 A. Correct.

12:32:34 17 Q. What was the nature of the assault?

12:32:37 18 A. His story changed a couple of times.
12:32:40 19 Basically, when he was chasing Mr. Owensby he was
12:32:44 20 able to catch him from behind, and as he was trying
12:32:48 21 to take him to the ground they exchanged blows with
12:32:52 22 their fists. Mr. Owensby was allowed to escape out
12:32:55 23 of his coat and continued running when Mr. Hunter
12:33:03 24 could not catch him the second time.

1 cruiser and picking up my night stick, which was
2 either in the door or in the screen of our car.
3 Jogged up to catch up to them. At which point I
4 believe they were probably five, ten feet away from
5 the side of the window on the Sunoco store. I stood
6 back, because I knew I couldn't identify him. And
7 Officer Hunter, I believe, made the statement to the
8 effect, "I believe that's him." And Officer Caton
9 asked, "Are you sure?" And something to the effect
10 of, "I can't tell from here, but I believe that's
11 him."

12 Q. Now, can you indicate on that chart,
13 Exhibit -- or sketch, Exhibit 8, where you, Officer
14 Hunter, and Officer Caton were located at this time,
15 when you're standing outside --

16 A. Somewhere --

17 Q. -- the convenience store.

18 A. -- on the side of Sunoco. On the
19 northwest side there is a window. I don't know
20 exactly where it is, if it's in the front of the
21 store, the middle of the store, the side. I don't
22 know. Wherever that window was, let's just say for
23 example it's right here (indicating).

24 Q. Okay. Mark that with the letter A.

13:04:23 1 broke and ran past Pat, past Dave. I somewhere lost
13:04:30 2 my night stick and my handcuffs in a short pursuit.

13:04:37 3 Q. Let me -- let me stop you there. When --
13:04:44 4 when you reached for your handcuffs you reached with
13:04:47 5 your right hand for your handcuffs?

13:04:49 6 A. Yes.

13:04:49 7 Q. And your handcuffs are located on the back
13:04:52 8 of your belt?

13:04:54 9 A. Yes.

13:04:54 10 Q. Did you open the pouch and pull the
13:04:56 11 handcuffs out?

13:04:57 12 A. I don't know.

13:05:02 13 Q. Up to this point in time, did you ask this
13:05:08 14 individual if he went by the nickname of LA?

13:05:11 15 A. Not at that point, yet.

13:05:14 16 Q. Did Officer Caton ask if he went by LA?

13:05:18 17 A. I don't think anybody asked him if he went
13:05:20 18 by LA.

13:05:21 19 Q. Yeah. And so Hunter did not either?

13:05:23 20 A. I don't know if he did or not. I don't
13:05:24 21 remember him saying that -- or asking that.

13:05:27 22 Q. To your recollection, no one asked this
13:05:30 23 person that you had stopped to talk to whether or
13:05:31 24 not he went by the nickname of LA?

10:52:55 1 2000?

10:52:56 2 A. It's what's called the digital tip. It
10:52:58 3 basically is the tip of your finger. What I did is,
10:53:01 4 once I had Mr. Owensby stabilized with the head
10:53:05 5 wrap, I applied to -- what you're -- what you're
10:53:11 6 supposed to do with a pressure point is look for
10:53:14 7 compliance. You apply the pressure, give the
10:53:17 8 command, look for compliance. When a subject is
10:53:22 9 resisting as strongly as he was, the only way you
10:53:26 10 can overcome strength is with pain compliance
10:53:28 11 techniques.

10:53:31 12 Q. Okay. All I'm asking is how you employed
10:53:32 13 the pressure point technique at this point.

10:53:35 14 A. I had his head stabilized with my left
10:53:38 15 hand around his forehead here (indicating). I
10:53:41 16 brought in my right hand -- thumb, and applied it to
10:53:45 17 the mandibular angle, looking for compliance.

10:53:48 18 Q. So it was the thumb at the base of the ear
10:53:51 19 and the jaw bone?

10:53:52 20 A. At the base of the ear. The jaw bone's
10:53:56 21 down here (indicating).

10:53:56 22 Q. Oh, okay.

10:53:57 23 A. Down here where --

10:53:57 24 Q. Base of the ear?

14:50:43 1 would have encountered, no, he probably wouldn't
14:50:45 2 have been handcuffed.

14:50:46 3 Q. So he would have been given a citation and
14:50:49 4 that would be the end of it?

14:50:50 5 A. Pretty much.

14:50:51 6 Q. At any time do you recall Mr. Owensby
14:51:04 7 kicking?

14:51:05 8 A. Yes.

14:51:05 9 Q. When -- when was he kicking?

14:51:09 10 A. I felt the lower part of his body moving
14:51:12 11 in the beginning of the situation when we were first
14:51:15 12 on the ground and I was on my back. Of course, I --
14:51:17 13 I was able to turn him over fairly quickly. And as
14:51:21 14 I am trying to scoot around to the side of him, he
14:51:24 15 is still trying to get up. So, yes. After that, I
14:51:28 16 don't recall him much kicking after that, no.

14:51:31 17 Q. With respect to the initial time when you
14:51:33 18 fell to the ground, after you tackled him and you
14:51:36 19 fell to the ground on your back, him on top of you,
14:51:39 20 am I correct in understanding that it was almost
14:51:44 21 instantaneous, as you hit the ground, you flipped
14:51:46 22 him over so that he was face down on the asphalt and
14:51:50 23 you were on top of him?

14:51:52 24 A. Yes.

13:49:44 1 A. I don't remember.

13:49:45 2 Q. What about Officer Hunter?

13:49:47 3 A. I don't remember what he did.

13:49:51 4 Q. Is it fair to say that all of these --
13:49:57 5 that the -- these five officers, you, Officer Caton,
13:50:01 6 Officer Hodge, Officer Hunter and Officer Sellers
13:50:04 7 worked together in arresting Mr. Owensby?

13:50:14 8 A. Uh, not Webster, but it sounds like a
13:50:25 9 reasonable summation.

13:50:30 10 Q. Would you describe it as a team effort?

13:50:37 11 A. I guess.

13:51:07 12 Q. On the -- on that evening -- earlier that
13:51:10 13 evening, when you originally responded to Officer
13:51:12 14 Hasse and Sellers' car and there was a suspect in
13:51:18 15 the back seat, do you know why the suspect in the
13:51:21 16 back seat had been arrested?

13:51:23 17 A. Had to have been for a minor misdemeanor.
13:51:26 18 That's what they were missing was the minor
13:51:27 19 misdemeanor payout citation.

13:51:30 20 Q. Did you know what it was?

13:51:31 21 A. No.

13:51:31 22 Q. Did you ever talk to that person?

13:51:32 23 A. I don't remember if I did or not.

13:51:34 24 Q. Do you recall whether or not the person

13:30:02 1 A. I don't know.

13:30:05 2 Q. Did you ever see him kicking?

13:30:07 3 A. No.

13:30:07 4 Q. What do you recall Officer Caton doing?

13:30:18 5 A. He was mostly responsible for handcuffing.
13:30:23 6 When I got Mr. Owensby's left arm out, I remember
13:30:27 7 bringing it back. That's when I used my knee on his
13:30:30 8 shoulder and I'm bringing his arm back to Pat to
13:30:33 9 place the handcuffs on.

13:30:35 10 Q. Were you kneeling at this time?

13:30:36 11 A. Yes.

13:30:37 12 Q. So you had gotten up off of -- originally,
13:30:40 13 when we talked you had your head into his shoulder.
13:30:45 14 So you had pushed yourself up?

13:30:47 15 A. How -- so we don't get out of context
13:30:49 16 here, how it went: After we're on the ground, we
13:30:54 17 get rolled over, we're positioned differently. I'm
13:30:57 18 trying to get my arm out from under his body.
13:31:01 19 That's when I let go of his arm and I'm trying to
13:31:03 20 get my arm out. As I'm coming out, I tried to grab
13:31:07 21 his bicep and elbow and pull his arm out with me. I
13:31:11 22 can't get it to come out.

13:31:12 23 That's when I wrap his head and perform
13:31:16 24 the mandibular angle pressure point to try to gain

13:31:19 1 compliance to overcome his strength by getting his
13:31:22 2 arm out. Just so we don't lose sight of that part.

13:31:26 3 At that point, as soon as I gave him the
13:31:27 4 commands, it was either twice or three times, his
13:31:30 5 arm and his elbow -- his elbow moves up, his wrist
13:31:34 6 starts to come up, I trap his wrist, I let go of the
13:31:37 7 head, I come up. I give the arm to Pat as the
13:31:40 8 handcuffing process is going on.

13:31:43 9 Q. When's the Macing?

13:31:45 10 A. I believe right, maybe the second before
13:31:49 11 his arm pops out or as it's popping out. Might have
13:31:53 12 been maybe a second before.

13:31:54 13 Q. Before the handcuffs are applied or after?

13:31:56 14 A. Before.

13:31:57 15 Q. At the time -- and -- and who applies the
13:32:03 16 Mace?

13:32:04 17 A. Officer Hunter.

13:32:05 18 Q. Did -- was Officer Hunter ever -- any part
13:32:08 19 of Officer Hunter's body in contact with Mr.
13:32:10 20 Owensby?

13:32:11 21 A. I don't know.

13:32:27 22 Q. At this point in time that you've
13:32:28 23 described, where you have Mr. Owensby's arm out
13:32:34 24 and -- left arm out, and you're giving it to Officer

13:27:04 1 A. No. I went through what I'm going through
13:27:06 2 right now and tried to give them case-by-case
13:27:08 3 stories, trying to give them examples of what
13:27:11 4 happened to me or what happened to other officers to
13:27:12 5 let them know. And then we'll walk them through
13:27:14 6 different situations and ask them, "When do you
13:27:16 7 think you need to call?"

13:27:17 8 Other -- some officers have a higher skill
13:27:19 9 level than others. Some officers are very good
13:27:31 10 schmoothers, have a very good mouth and can calm a
13:27:31 11 situation down no matter how bad it is. Other
13:27:31 12 officers can't do that. Other officers rely on
13:27:32 13 different things. I don't know.

13:27:32 14 Q. In this situation with Mr. Owensby did you
13:27:33 15 think that there should have been put out an officer
13:27:36 16 needs assistance call?

13:27:38 17 A. As soon as I wrapped him up and took him
13:27:41 18 to the ground, yes.

13:27:41 19 Q. Why?

13:27:42 20 A. He was a lot stronger than I was.

13:27:54 21 Q. On what do you base the -- your statement
13:27:57 22 that he was a lot stronger than you were?

13:28:01 23 A. Well, I'm trying to get his hand out from
13:28:03 24 under his -- his stomach, under his chest, and I

13:34:58 1 Q. When you raised Officer -- I'm sorry.

13:35:02 2 When you raised Mr. Owensby's head to be Maced, how
13:35:06 3 did you do that?

13:35:10 4 A. I really don't know. I don't know at what
13:35:14 5 point that happened, and I can't fully recall how it
13:35:19 6 was done, if it was done.

13:35:20 7 Q. Where were you when the Mace was applied?

13:35:24 8 A. In the same position I referred to you as
13:35:26 9 earlier. I was laying on the left side.

13:35:28 10 Q. Were you still kneeling on the shoulder?

13:35:30 11 A. No.

13:35:33 12 Q. Where were your -- were you in a kneeling
13:35:35 13 position?

13:35:36 14 A. I don't remember.

13:36:04 15 Q. What did Officer Hodge do to assist in the
13:36:10 16 arrest of Mr. Owensby?

13:36:13 17 A. The exact things, I'm -- I don't really
13:36:16 18 recall. You're going to have to ask Officer Hodge.
13:36:19 19 I do know he was helping with the right arm to come
13:36:22 20 over and handcuff him. Exactly what he did, I don't
13:36:25 21 know.

13:36:25 22 Q. Did he use a PR-24?

13:36:27 23 A. Uh, incorrectly, yes.

13:36:29 24 Q. Okay. But, I mean, there was a billy club

1 or a PR-24 --

2 A. A PR-24 was --

3 Q. -- used in the arrest?

4 A. Yes.

5 Q. How -- to your recollection, how was it
6 used?

7 A. Well, when he first -- I don't know if
8 he -- where he got the PR-24, because he was in old
9 clothes and probably didn't have one with him. So
10 whose it was, I don't know.

11 He, from what I remember, was using it
12 incorrectly, and he was on top instead of
13 underneath. I took the PR-24 out of his hand and
14 slid it under the arm real quick so he could help
15 Pat bring the other hand over.

16 Q. Under the right arm?

17 A. Yes.

18 Q. So you're on the left-hand side, you reach
19 across, grab the PR-24, and insert it under the
20 right arm?

21 A. Yes.

22 Q. Is it inserted between the torso and the
23 elbow or from the outside through the elbow to the
24 torso?

1 officers -- when you have a subject that's still
2 resisting, not that violent anymore, but yet still
3 resisting and not cooperating, get them to the
4 closest car you can. And the closest car we had was
5 an undercover unit, didn't have a cage in the back
6 of the car. So Golf Manor was there, we put him
7 there.

8 Q. And you got permission from Golf Manor to
9 do that?

10 A. Yes.

11 Q. Who actually asked the Golf Manor officer
12 for permission?

13 A. I remember asking them, "Can we put him in
14 your car?" And from, again, from what I've heard,
15 other officers asked also. I don't remember which
16 ones they were.

17 Q. And do you recall the response that you
18 got?

19 A. Something to the effect of, sure, go
20 ahead.

21 THE REPORTER: Pardon me?

22 THE WITNESS: Sure, go ahead.

23 Q. And the officer you talked to from Golf
24 Manor was Officer Robert Heiland?

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CITY OF CINCINNATI, :
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Defendants. :

Videotaped deposition of PATRICK EDMUND

CATON, a defendant herein, called by the plaintiffs
for cross-examination, pursuant to the Federal Rules
of Civil Procedure, taken before me, Wendy Davies
Welsh, a Registered Diplomate Reporter and Notary
Public in and for the State of Ohio, at the offices
of Helmer, Martins & Morgan Co. LPA, 1900 Fourth &
Walnut Centre, 105 East Fourth Street, Cincinnati,
Ohio, on Friday, October 17, 2003, at a.m.

11:54:25 1 but he had indicated to me that an assault had taken
11:54:29 2 place on him while he attempted to make a -- an
11:54:32 3 arrest for a drug charge of some kind. Whether it
11:54:37 4 was trafficking or not, I don't know. And he also
11:54:39 5 indicated to me that he had made a recovery.

11:54:45 6 Q. Did he explain what kind of recovery?

11:54:49 7 A. No, and I didn't ask. When you say you're
11:54:53 8 in-- I -- when you're saying -- when you say I was
11:54:57 9 investigating a drug incident and I made a recovery,
11:55:00 10 that says to me you recovered some type of narcotic,
11:55:04 11 some type of illegal substance.

11:55:06 12 Q. So that's -- that's what you understood --

11:55:09 13 A. That's what I understood him to say.

11:55:12 14 Q. -- from Officer Hunter?

11:55:13 15 A. That's correct.

11:55:13 16 Q. Did he mention anything about a sweat
11:55:16 17 shirt?

11:55:16 18 A. No.

11:55:17 19 Q. Continue.

11:55:17 20 A. Somebody at that point said, "Maybe this
11:55:26 21 guy," referring to the person that we had in
11:55:28 22 custody, "knows something about LA and can give us
11:55:35 23 some further information."

11:55:35 24 Because when I asked, "Do we know LA's

1 It was then I could identify him as a male, black,
2 about medium size, medium height. I could make out
3 the silhouette of dreads and a light-color shirt,
4 and that's about it.

5 I then --

6 Q. What -- what --

7 A. Skipping ahead.

8 Q. -- color pants?

9 A. I don't recall what color of pants.

10 Q. Okay. Go ahead.

11 A. And then we then proceed, Officer Hunter
12 and Officer Jorg and I, then proceeded towards the
13 Sunoco lot. And as I recall it, Officer Jorg
14 returned to the car momentarily for something and
15 then caught back up to us as we were approaching the
16 Sunoco lot in --

17 Q. Let me ask you, before you approached the
18 Sunoco lot in response to Officer Hunter saying "I
19 think that's LA," did you hear Officer Jorg say
20 anything?

21 A. Again, I don't recall who suggested that
22 this guy might know who LA is, but -- I don't know
23 if that was Officer Jorg or Officer Hunter or
24 Officer Hasse or anybody, but it was at the

1 Q. All right. And as I understand your
2 testimony, neither you nor Officer Jorg could back
3 Officer Hunter up, because there just wasn't enough
4 time between him doing that and Mr. Owensby then
5 trying to take off?

6 A. In -- in that whole instant, Officer
7 Hunter indicated to Officer Jorg that that's him.
8 Officer Jorg reached for his handcuffs and I think
9 reached for Owensby. And actually, I -- I didn't
10 see that. I know that because I've seen the tape
11 now, but --

12 And before any-- anybody could move, it
13 became a blur of activity at that point. There was
14 an -- an explosion of movement, the best way I can
15 describe it. Suddenly Dave Hunter wasn't there
16 anymore, Owensby wasn't there anymore, my partner's
17 running across, and I'm realizing we're now engaged
18 in a foot pursuit.

19 I start running. Blaine stayed about step
20 for step with Owensby. I don't know where Dave
21 went. I can only conclude he got knocked down or
22 punched at that point.

23 I reach up -- I start running and reach up
24 to key up my mike to put out a foot pursuit. Before

1 doing.

2 Q. All right. Continue.

3 A. It -- it just never got that far.

4 Q. Continue.

5 A. At that point I put out the assistance
6 call. By the -- I -- I felt it was a very dangerous
7 situation. The first-level -- the -- the first-
8 level response to this was -- first level of force
9 is presence, and the more officers we can get there
10 quickly, the quicker this event will be over and,
11 hopefully, neither I or any of my partners would be
12 injured. And, too -- and -- and, too, another fact,
13 so, hopefully, the suspect isn't injured.

14 And we're in a very dangerous situation,
15 rolling around on the ground with the suspect and
16 there's three firearms present, is what's running
17 through my mind.

18 I begin climbing up the length of
19 Owensby's right leg, essentially working my way up
20 his leg. His left leg is kicking. I remember
21 actually turning my head away to keep from getting
22 kicked in -- in the head.

23 I then ended up at some point with my
24 chest essentially on his right buttock and I start

1 bringing my knees up underneath me to get some
2 leverage.

3 Q. Where's your head at this point? Is it in
4 the small of his back or are you raised up?

5 A. I'm -- I'm raising up --

6 Q. Okay.

7 A. -- at this point. I try to reach
8 underneath with one arm, try -- he's got his right
9 arm, both arms pinned under his body like this
10 (demonstrating) and he's not surrendering his arms.
11 I reach under his body with my right arm and attempt
12 to pull his right arm out, and he just snaps it back
13 from me.

14 Q. Is -- is the kicking that's going on
15 kicking -- if -- if you're laying face down, is it
16 kicking like raising your knee to raise your foot up
17 or -- or is he kicking from his hip?

18 A. I -- I don't know.

19 Q. You don't know?

20 A. I don't know.

21 Q. Continue.

22 A. The -- at some point I took a slight blow
23 to the shoulder while he was kicking. I -- I don't
24 know how he was kicking at that point.

1 Q. All right.

2 A. I reached underneath. His hand snapped
3 back. I then pivoted around to get -- being more
4 perpendicular to his body, taking my left knee out
5 from between from his legs, and getting more along
6 the sides of his legs so I can reach under with both
7 hands at this point and pull his left -- pull his
8 right arm out from underneath him. I start to pull
9 it with both --

10 Want me to stop?

11 Q. Well, I just wanted to ask you, is your --
12 so at this point both your knees are to Mr.
13 Owensby's right side?

14 A. That's correct.

15 Q. Is your chest still in contact with his
16 buttock area?

17 A. I don't -- I don't think so. I don't
18 know. I really don't know.

19 Q. All right. You -- you were saying you
20 reached under?

21 A. Reach under -- I reached underneath him,
22 and he was strong enough to just rip his arm right
23 back out of my right -- my hands. At that point I
24 delivered two palm strikes to the lower back part of

1 his back, rib cage area.

2 Q. Kidney area?

3 A. I -- I wouldn't -- no. I -- I made
4 contact with his ribs.

5 Q. So above that?

6 A. Above that.

7 Q. What's Officer Jorg doing?

8 A. I -- I couldn't tell you.

9 Q. You don't know?

10 A. I don't know.

11 Q. What about Officer Hunter?

12 A. I have no idea.

13 Q. Continue.

14 A. That allowed me -- it -- it -- it's a pain
15 compliance technique that we're taught in the
16 academy. That allowed me to dislodge his arm. I
17 then pivoted back around behind him with his arm, in
18 an attempt to get his arm into a handcuff position.

19 Q. Let me interrupt you. When you were
20 pivoting back now, is your left knee between his
21 legs?

22 A. It's between his legs, and I'm putting my
23 weight on his right buttock essentially.

24 Q. Where's your right knee?

1 I'm -- I'm willing to bet this is the car they hit,
2 but I -- I can't recall the actual car.

3 Q. Okay. All right. At the time that
4 Officer -- I think you indicated Officer Jorg had
5 tackled Mr. Owensby high, grabbed him around the
6 shoulders.

7 A. That's correct.

8 Q. Is that right? Did you tackle Mr. Owensby
9 also?

10 A. As I approached Jorg and Owensby, they
11 were already halfway to the ground, and the only
12 exposed part of Owensby that I could see were his
13 legs. So I dropped low and started to go in to take
14 him at the legs to take him to the ground.

15 Now, I don't know if my impact caused the
16 fall to the ground. I don't know if they were
17 already onto the ground or -- all I know is that,
18 like I said, it was a blur of activity. I've got
19 faint moments of pictures in my mind as to what
20 happened.

21 When we were on the ground and now
22 struggling with Owensby, I had essentially ahold of
23 his right foot. At some point I keyed up my mike
24 and started screaming, "Sunoco lot. Sunoco lot.

1 A. I would say I was straddling a little --
2 yeah, that -- that would probably be the most
3 accurate way of describing it.

4 Q. Okay. Continue.

5 A. I reach up for the cuff, and as soon as I
6 reach for the cuff I start to lose his arm back
7 underneath his body. And I manage to bring it down
8 real fast and -- and oh, man, I got lucky. The cuff
9 spun and clicked closed right on his right wrist at
10 that point. And now I've got a little bit of a
11 leverage point that I can use on his right wrist and
12 I start twisting it and trying to bring it back
13 across his body.

14 Q. Did you say anything to announce to your
15 partner that you had one cuff on or something along
16 those lines?

17 A. No.

18 Q. All right.

19 A. I'm -- I'm giving -- all through this I'm
20 giving commands to him, either "Stop resisting" or
21 "Give me your hand, give me" -- when I struck him
22 the first two times, I said -- both times I struck
23 him, I said, "Give me your hand, give me your hand."

24 And anyhow, I started to work it back

1 towards the middle of his back and I wasn't moving.
2 It simply wasn't moving. And, because I didn't
3 already smell it, I figured Mace wasn't employed at
4 this point. And I screamed, "Mace this guy," and
5 nothing happened. And I screamed again, "Somebody
6 Mace this guy," and nothing happened.

7 And I looked up and I saw David Hunter on
8 one knee near the head of Roger Owensby, and the
9 best way I can describe it is he had like a deer
10 caught in the headlights look on his face and he's
11 looking at Roger Owensby's face.

12 Officer Jorg at this point is laying at an
13 angle across Owen-- I guess it would be Owensby's
14 left shoulder.

15 Q. Where's Officer Jorg's head?

16 A. Up near Owensby's head.

17 Q. Okay.

18 A. And I looked at Officer Hunter and I
19 bellowed at the top of my lungs, "Mace this mother
20 fucker." The intent was to shock him into action.

21 Q. Okay.

22 A. At which point he snapped, went to his
23 Mace canister and started to pull it out. And I --
24 my -- I dropped my attention back to the handcuff.

1 A. It's outside his right leg.

2 Q. On the asphalt?

3 A. On the asphalt.

4 Q. Okay. Continue.

5 A. I start to try to bend his arm back behind
6 his body, and it's -- it's just not going where --
7 I'm stalemated. I can't get him -- he's so strong I
8 can't get his arm behind him.

9 Q. Is his -- is his hand out from under his
10 body at this point?

11 A. At this point, but I -- he's -- he's
12 trying to pull it back under his body and we're kind
13 of stalemated trying to -- I'm trying to get it
14 behind his back, he's trying to get it back under
15 his body, and he's significantly stronger than me.
16 And with his right arm he's actually stalemated me
17 with both my hands. So it's --

18 At that point, I believe I screamed "I
19 need a cuff, I need a cuff." Because if I let go to
20 try and get -- with either hand to try and get to my
21 own, his arm's going right back underneath his body.

22 I see a --

23 Q. What's -- if I may. What's the position
24 of his right arm? Is it still cocked at the elbow,

1 Q. Continue.

2 A. Officer Jorg starts bringing his left arm
3 back. At this point I screamed, "Stop resisting,
4 stop resisting, stop resisting," and -- and
5 delivered three more blows to the forearm.

6 His arm is starting to bend a little bit,
7 but it's not getting into a position where I can get
8 his right hand close enough to his left hand to
9 handcuff it, and I deliver three more blows along
10 the forearm, around the ar-- elbow, above the elbow
11 area. It's now coming back closer to his back and
12 his arm starts to bend a little bit more.

13 And we're still in a struggle. I can see
14 now Owensby's left hand coming back to me. I can
15 see the right hand's getting there, but it's still a
16 matter of -- it's a battle for inches now to try and
17 get his left hand into his -- into the left cuff.

18 At some point out of the corner of my eye
19 I see a PR-24 introduced to the right arm. The
20 right arm suddenly levers to the left. The left arm
21 goes into the cuff. We close the cuffs.

22 Q. As to the PR-24, how was it used?

23 A. As -- as a lever tool. As a tool to lever
24 his arm back.

12:49:55 1 Q. Where's Officer Jorg?

12:49:57 2 A. I don't know.

12:50:00 3 Q. Okay. What happens?

12:50:02 4 A. We look up, we see the Golf Manor officer,
12:50:05 5 and I think we all said it at once, "Can we use your
12:50:08 6 car?" And he just nods and starts walking towards
12:50:12 7 his cruiser, presumably to open up the back door of
12:50:15 8 it, and we start walking towards the cruiser.

12:50:18 9 I would describe Owensby's behavior as
12:50:21 10 being passively resisting. At one point he raised
12:50:27 11 his legs up off the ground to keep us from walking
12:50:31 12 towards the cruiser, and we almost all pitched
12:50:35 13 forward back to the ground at that point. And
12:50:37 14 somebody said, "Put your feet down and walk," and he
12:50:41 15 did.

12:50:42 16 Q. Did you say that?

12:50:44 17 A. I -- I don't recall. I could have -- I
12:50:46 18 could have been the one who said that.

12:50:47 19 Q. The officer, the Golf Manor officer that
12:50:50 20 you and the others had asked to place Mr. Owensby in
12:50:55 21 the car, do you know who that was?

12:50:57 22 A. No, I don't.

12:50:59 23 Q. Do you know who Officer Heiland is?

12:51:02 24 A. I've heard the name, but I don't know

1 He said, "Yeah."

2 We gloved up, and Sergeant Watts said,
3 "Get him out of the car." And Officer Hasse and I
4 removed him from the car.

5 Q. Is that the first time you realized that
6 Roger Owensby was injured?

7 A. That's correct.

8 Q. Well, you knew before you placed him in
9 the car that he had been Maced, right?

10 A. That's correct.

11 Q. And isn't it true that the standard for
12 care of someone who has been Maced is to provide
13 them with water and fresh air?

14 A. That is correct.

15 Q. And that was not provided?

16 A. I wouldn't consider that an injury.

17 Q. What do you consider someone having been
18 Maced?

19 A. An irri-- it's an irritation. It's a
20 device used to irritate and cause pain. It doesn't
21 cause injury.

22 Q. Okay. Well, in any event, you knew that
23 he had been Maced, you knew that the standards were
24 to provide water and fresh air, and you knew that

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1 And I said, "He said his name was Roger
2 something, but I can't recall."

3 He said, "Well, let's begin there." And
4 that's when we approached the Golf Manor cruiser.

5 And he looked in the passenger -- or the
6 driver's side rear door and realized that he wasn't
7 moving, and he opened -- he opened the door and
8 started to lean in.

9 And I stopped him. I said, "Sarge, be
10 careful. He might be playing possum," indicating
11 from experience when you have a violent prisoner
12 sometimes they'll try and lure you back in the car
13 so they can hurt you.

14 And he said "No, Pat, I don't think that
15 guy's breathing." And we shined the flashlight in
16 and we realized he was actually not breathing. And
17 that's when we began the process of getting him out
18 of the car.

19 Q. This is from the driver's side?

20 A. The driver's side.

21 Q. So his head would have been toward you and
22 his feet would have been away from you?

23 A. That's correct.

24 Q. Did -- okay. What -- what happened next?

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1 A. That's where we began today. That's when
2 I looked up. And the first person I saw was Officer
3 Hasse, where I -- I had known from talking to him
4 that he -- he was an EMT before he was a cop.

5 I said, "Do you have any rubber gloves?"

6 He said, "Yeah."

7 "You got an extra pair?"

8 "Yes."

9 "Glove up. Let's get this guy out of the
10 back seat of the car," and then we began the CPR
11 procedures on him.

12 Q. When you got him out of the back seat of
13 the car, did you take him out from the driver's side
14 or from the passenger's side?

15 A. From the passenger's.

16 Q. So you came around, opened the door?

17 A. Right.

18 Q. How was Mr. Owensby situated in the back
19 seat of the car?

20 A. His position had changed from when I saw
21 it last. When I came back and saw it now, he had
22 been -- he was rolled over on his back and his head
23 was pinned at like an angle between -- I want to say
24 between his shoulder and the back of the seat.

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1 audiotape of the incident. From the time I put out
2 the officer needs assistance broadcast, which is
3 pretty much as we all hit the -- as soon as we're on
4 the ground, to the time that I say, Prisoner's
5 secure, we need a boss for a Macing, is right at two
6 minutes.

7 Q. And when you said, Prisoner's secure, we
8 need a boss for Macing, that was right after you had
9 closed the door to the Golf Manor cruiser?

10 A. That's correct.

11 Q. Did you and Officer Sellers place Mr.
12 Owensby in the back seat of the cruiser, the Golf
13 Manor cruiser because Mr. Owensby was in such a
14 condition that it was difficult to get him to walk?

15 A. No. He walked to the Golf Manor cruiser.

16 Q. If that were the case, why didn't you walk
17 him to your cruiser?

18 A. Because my cruiser was over 100 yards
19 away, over a guarder that you had to climb over to
20 get to it. And as violently as he resisted, I
21 didn't want to give him that much more time to
22 recover and begin resisting again. I wanted to
23 secure him as quickly as possible.

24 The Golf Manor cruiser was the only